IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.M.JAMES

MONDAY, THE 5TH MARCH 2007 / 14TH PHALGUNA 1928

CRL.A.No. 1729 of 2006()

AGAINST THE JUDGEMENT/ORDER IN CRLP.384/2006 Dated 03/08/2006
S.T.1054/2006 of JUDL. MAGISTRATE OF FIRST CLASS COURT-I, THRISSUR

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APPELLANT: COMPLAINANT

SHAJI M.A., S/O. ANTONY,
MANJALI HOUSE, UNITY ROAD,
KURIACHIRA, THRISSUR.

BY ADV. SRI.DILIP J. AKKARA

RESPONDENTS: ACCUSED & STATE

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1. MARY A.A.,
ATHIYUNTHAN HOUSE, SOCIAL NAGAR,
LALOOR, ELTHURUTH P.O., THRISSUR.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.THOMAS JOHN AMBOOKEN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 05/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.M. JAMES, J.

Criminal Appeal No. 1729 of 2006

Dated this the 5th March, 2007.

J U D G M E N T

The complainant is the appellant. The complaint was preferred under Section 138 of the Negotiable Instruments Act. Counsel appearing for the appellant submits that the complaint was originally posted before the Chief Judicial Magistrate Court, Thrissur. However, it was made over to Judicial First Class Magistrate Court-I, Thrissur. But the counsel further submitted that the clerk of the Advocate has wrongly noted the Court as Judicial First Class Magistrate Court-II, instead of Judicial First Class Magistrate Court-I. Except the statement now being made, as well as pleaded through the appeal memorandum, there is not even an affidavit filed by the concerned clerk or his advocate. Therefore, I cannot disagree with the statement of the Magistrate that there was no reason stated for the non-presence of the complainant, at the time when the case was taken up. It was in those circumstances that the learned Magistrate had dismissed the complaint observing that neither the counsel, nor the complainant was present, at the time of consideration of the complaint, and acquitted the accused. Therefore, this appeal is preferred, after obtaining leave of this Court.

2. The learned counsel appearing for the appellant submit the grounds urged in the appeal memorandum. Though notice was served to the first respondent, accused, there is no representation. The complaint was filed in the year 2006. The matter remains on file till now. Merely because of the inaction on the part of the advocate who was appearing for the complainant before the court below, and may be his clerk, on whom the Advocate has no control, I should not penalise the complainant, and agree with the dismissal. Therefore, I am inclined to give an opportunity to the parties to raise their contentions before the court below.

3. Therefore, I set aside the impugned order, dated 22.2.2006, and restore S.T.No. 1054/2006, to the file of the Judicial First Class Magistrate Court-I, Thrissur.

4. The complainant shall appear before the court below on 9.4.2007.

5. As there is no appearance from the first respondent, accused, the learned Magistrate shall take coercive steps against him to get his presence before the court below, and thereafter shall

dispose of the case, at the earliest, and in any case, within four months from the date of appearance/production of the accused before that court.

Criminal Appeal is allowed as above.

J.M. JAMES,
JUDGE

nj.